

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,
Plaintiff,
v.
RICHARD MARSCHALL,
Defendant.

CASE NO. CR20-5270RJB

ORDER GRANTING IN PART
AND DENYING IN PART MOTION
IN LIMINE TO EXCLUDE AND/OR
LIMIT THE TESTIMONY OF DR.
SIMONE

THIS MATTER comes before the Court on the above-referenced motion (Dkt. 102). The Court is familiar with the records and files herein and is fully advised. An evidentiary hearing is not required to fairly resolve this motion.

First, as Defendant alleges at page 7 of the motion, “Dr. Simone is concluding that the garlic and larch starch are ‘drugs’ and ‘prescription drugs’ not based on any scientific testing or method but solely based on taking words uttered and written by Mr. Marschall and interpreting those terms.” That statement appears correct, and the proposed testimony in that regard is not

1 admissible because “Dr. Simone is merely telling the jury what result to reach under 21 U.S.C. §
2 321(g)(1) and 21 U.S.C. § 355.” Dkt. 102 at 9. The jury does not need the help of an expert to
3 determine whether the subject pills were misbranded, or whether they are considered drugs under
4 the statute due to Defendant’s sales puffery.

5 On the other hand, the evidence from Dr. Simone as set forth in the Plaintiff’s response to
6 Defendant’s motion (Dkt. 112) at page 3, beginning at line 13, appears to be an expert opinion as
7 to the justification for the statutes at issue in this case, and it is appropriate to offer an expert’s
8 opinion giving the reasons for a statute that, on its face, appears to be counterintuitive. To the
9 extent that Defendant’s motion is designed to prevent Dr. Simone’s testimony as reflected on
10 page 3 of Plaintiff’s response, the motion should be denied.

11 To the foregoing extent, Defendant’s Motion *in Limine* to Exclude and/or Limit the
12 Testimony of Dr. Simone (Dkt. 102) is GRANTED IN PART AND DENIED IN PART.

13 **IT IS SO ORDERED.**

14 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
15 to any party appearing *pro se* at said party’s last known address.

16 Dated this 24th day of May, 2021.

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19 ROBERT J. BRYAN
United States District Judge